

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

PENNY NINIVAGGI, individually and on
behalf of all others similarly situated,

Plaintiff,

-against-

UNIVERSITY OF DELAWARE,

Defendant.

Civil Action No.

NOTICE OF REMOVAL

Defendant the University of Delaware (the “University of Delaware”), by and through its undersigned attorneys, hereby files this Notice of Removal pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1446 *et seq.* The grounds for removal are as follows:

1. Plaintiff commenced the action in the Supreme Court of the State of New York, County of Nassau, Index No. 604688/2020, by filing a Summons and Complaint (“Complaint”). The University of Delaware is the only named defendant.

2. Plaintiff served the University of Delaware personally on or about June 1, 2020. Copies of all process, pleadings, and orders served upon the University of Delaware are attached to this Notice as Exhibit 1.

3. The University of Delaware has not filed a responsive pleading to the Complaint.

4. Plaintiff is a citizen of New York who resides in Merrick, New York and thus is a citizen of New York pursuant to 28 U.S.C. § 1332(a).

5. According to Plaintiff’s Class Action Complaint, “[t]his is a class action lawsuit on behalf of all people who paid tuition and fees for the Spring 2020 academic semester at UD

and who, because of Defendant's response to the Novel Coronavirus Disease 2019 ("COVID-19") pandemic, lost the benefit of the education for which they paid, and/or the services for which their fees were paid, without having their tuition and fees refunded to them." *See*, Plaintiff's Class Action Complaint included in Exhibit 1 at ¶ 1.

6. According to Plaintiff's Class Action Complaint, "[w]ith approximately 18,500 undergraduate and 4,500 graduate students, UD is the largest university in Delaware. UD offers 148 bachelor's programs, 121 master's programs (with 13 joint degrees) and 55 doctoral programs across its eight colleges." *See*, Plaintiff's Class Action Complaint included in Exhibit 1 at ¶ 2.

7. According to Plaintiff's Class Action Complaint, "[a]pproximate tuition costs at UD for the Spring 2020 Semester are as follows:

- Undergraduate Tuition (in-state): \$6,365
- Undergraduate Tuition (out-of-state): \$17,080
- Associate in Arts Program (in-state): \$2,113
- Associate in Arts Program (out-of-state): \$5,275

See, Plaintiff's Class Action Complaint included in Exhibit 1 at ¶ 15.

8. The University of Delaware is a corporation organized under the laws of Delaware with its principal place of business in Delaware and thus is a citizen of Delaware pursuant to 28 U.S.C. § 1332(a).

9. The Class Action Fairness Act ("CAFA") creates federal jurisdiction for class actions, provided the proposed class and alleged claims meet certain qualifications. It "[c]onfer[s] original federal jurisdiction over any class action involving (1) 100 or more class members, (2) an aggregate amount in controversy of at least \$5,000,000, exclusive of interests

and costs, (3) minimal diversity, *i.e.*, where at least one plaintiff and one defendant are citizens of different states. 28 U.S.C. § 1332(d)(2), (5)(b),(6).” *Blockbuster Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006).

10. This proposed class and the alleged claims of the Complaint meet the federal jurisdiction requirements of CAFA.

11. First, there are more than 100 hundred class members. According to Plaintiff’s Class Action Complaint, there are over twenty-thousand students at the University of Delaware, and the Class is alleged to represent all twenty-thousand students. *See*, Plaintiff’s Class Action Complaint included in Exhibit 1 at ¶s 1-2. Therefore, the University of Delaware has met the first requirement for federal jurisdiction under CAFA.

12. Secondly, the amount in controversy exceeds \$5,000,000. According to Plaintiff’s Class Action Complaint there are approximately 23,000 students at the University of Delaware. Regardless of the calculation performed, the purported damages exceed \$5,000,000. At 23,000 students, and an in-state tuition rate of \$6,365.00 (and a higher out-of-state tuition rate), the purported tuition sought to be reimbursed for just one semester at the lowest tuition rate [23,000 students x (1/2 of the lowest annual tuition rate of \$6,365.00)], exclusive of interests and costs is well in excess of \$5,000,000. Therefore, the University of Delaware has met the second requirement for federal jurisdiction under CAFA.

13. Thirdly, minimal diversity of citizenship exists between the parties at the time the Summons and Complaint was filed, and minimal diversity of citizenship exists at the time of removal. Plaintiff is a resident of the state of New York, and the University of Delaware is a resident of the state of Delaware. Therefore, because at least one Plaintiff is a citizen of a different state than the University of Delaware, the Class meets the minimal diversity

requirements under CAFA for federal jurisdiction. *See, e.g., Blockbuster Inc. v. Galeno*, 472 F.3d 53, 56 (2d Cir. 2006).

14. Accordingly, the Court has original diversity jurisdiction in this case pursuant to 28 U.S.C. § 1332(d)(2), (5)(b),(6) because the class has over one hundred members, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States. Accordingly, this action is removable pursuant to 28 U.S.C. § 1441(a).

15. Written notice of the filing of this Notice of Removal is being served simultaneously upon Plaintiff's counsel and the Clerk of Nassau County as required by 28 U.S.C. § 1446(d).

16. By removing this action from the Supreme Court for the State of New York, County of Nassau, the University of Delaware neither waives any defenses available to it nor admits any of the allegations in the Complaint.

WHEREFORE, pursuant to 28 U.S.C. § 132(d)(2), (5)(b),(6)and 1441(a), Defendant the University of Delaware hereby requests removal of this action from the Supreme Court of the State of New York, County of Nassau, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
June 22, 2020

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